

CHAPTER II

TAXES ON SALES, TRADE, ETC.

2.1 Tax administration

Levy and collection of Value Added Tax receipts is governed by the Maharashtra Value Added Tax Act, 2002 (MVAT Act), Maharashtra Value Added Tax Rules, 2005 (MVAT Rules), notifications and instructions issued by the Government from time to time. The Sales Tax Department under the overall control of the Principal Secretary to the Government, Finance Department, is headed by the Commissioner of Sales Tax. He is assisted by the Zonal Additional Commissioners of Sales Tax, Joint Commissioners of Sales Tax in respect of functional branches and Deputy Commissioners of Sales Tax and other officers at divisional level.

The MVAT Act, came into force with effect from 1 April 2005. Prior to the introduction of the MVAT Act, the assessment, levy and collection of Sales Tax was governed by the Bombay Sales Tax Act, 1959 (BST Act) which was repealed with effect from 1 April 2005. However, the assessments pertaining to BST Act era that have not been finalised so far, continue to be governed by the erstwhile BST Act.

2.2 Internal Audit

The Department has an Internal Audit wing (IAW) headed by the Joint Commissioner of Sales Tax (Internal Audit). The criteria fixed by the IAW for audit of refund cases is as under.

- All cases where refund amount assessed by the assessing authorities (AA) is ₹ 10 lakh or more.
- All refund cases where the dealers deal in chemicals, iron and steel, etc.

The refund orders in the above cases are passed by the AA only after these cases are checked by the IAW.

In respect of all other assessments finalised by the AA, audit is conducted on selective basis by the IAW.

Information regarding position of cases selected for audit and actually audited is given in **Table 2.2**.

Table 2.2

Year	No. of cases selected for audit	No. of cases audited	Audit observations raised	Audit observations settled till 31.03.2014	Pending observations as on 31.03.2014
2009-10	3,560	3,742	830	587	243
2010-11	4,000	4,208	1,356	995	361
2011-12	3,240	3,065	1,188	1,031	157
2012-13	6,280	6,703	2,539	1,942	597
2013-14	16,695	18,628	5,905	4,720	1,185
Total	33,775	36,346	11,818	9,275	2,543

Thus the facts indicate that:-

- During the last five years, the IAW had conducted the audit of more number of cases than it had selected in that particular year except 2011-12.
- During the last five years, the number of audit observations raised by IAW has increased from year to year, their corresponding settlement has also shown an increasing trend. The Department has settled 78.48 *per cent* of the observations raised by IAW.

2.3 Results of audit

In 2013-14, test check of records of 284 units relating to VAT/Sales Tax assessments showed underassessment of tax and other irregularities involving ₹ 30.78 crore in 300 cases, which fall under the following categories as shown in **Table 2.3**.

Table 2.3

(₹ in crore)			
Sr. No.	Category	No. of cases	Amount
1	Audit of "Refund and Refund Audit Branch"	1	13.95
2	Non/short levy of tax	156	9.29
3	Incorrect grant/excess set-off	64	2.88
4	Non/short levy of interest/penalty	16	1.82
5	Other irregularities	63	2.84
Total		300	30.78

The Department accepted underassessment and other deficiencies of ₹ 97.84 lakh in 80 cases which were pointed out during 2013-14 and earlier years, and recovered amount of ₹ 60.59 lakh in 77 cases.

A few audit observations noticed during test check of the Refund and Refund Audit Branch and other units of the Sales Tax Department revealed underassessment of tax of ₹ 15.55 crore, which are mentioned in the succeeding paragraphs.

2.4 Audit of “Refund and Refund Audit Branch” of the Sales Tax Department

2.4.1 Introduction

Refund and Refund Audit Branch (RRA Branch) was formed in the Sales Tax Department with effect from March 2006 for timely finalisation of refund claims and to ensure the validity and accuracy of refund claims. The Refund and Refund Audit branches are headed by Joint Commissioners of Sales Tax (JCs) at divisional level assisted by Deputy Commissioners who are further assisted by the Assistant Commissioners and Sales Tax Officers.

The process of claiming refund starts from filing an application in Form 501 by a registered dealer. From October 2009, every registered dealer claiming refund is required to file refund application (Form 501) online making use of MAHAVIKAS. The refund applications so submitted are allotted to different assessing authorities (AA) of the RRA Branch making use of an application in the software in the system i.e. MAHAVIKAS itself.

The AAs of RRA Branch are required to finalise the assessments under the MVAT Act and allow the refunds along with interest, wherever due. The rates of interest are notified by the Government from time to time.

2.4.2 Scope and methodology of audit

There are 48 refund and refund audit units in 13 Divisions of the Sales tax Department. As per information furnished by the Department, refunds aggregating to ₹ 3,477.40 crore in 15,588 cases were granted during the year 2012-13 and 57,207 cases were pending in the state as on 31 March 2013.

We conducted audit of all refund cases finalised in the 19 units in five divisions between July 2013 and March 2014. Refunds aggregating to ₹ 2,946.40 crore in 9,048 cases had been finalised in these units during 2012-13. These are detailed in **Table 2.4.2**.

Table 2.4.2

(₹ in crore)						
Division	Opening balance as on 01.04.2012	Addition during the year 2012-13	Disposal during the year 2012-13	Balance as on 31.03.2013	No. of cases in which refund granted during 2012-13	Amount of Refund granted during 2012-13
Aurangabad	590	78	192	476	186	966.33
Mumbai	10,788	15,688	6,442	20,034	3,720	968.63
Nashik	1,475	8,930	7,224	3,181	2,196	72.96
Pune	2,490	9,550	11,322	718	1,326	864.68
Thane	5,169	2,834	1,626	6,377	1,620	73.80
Total	20,512	37,080	26,806	30,786	9,048	2,946.40

Thus, it would be seen that the audit coverage was 84.73¹ per cent in terms of amount of refunds and 58.04² per cent in terms of number of cases. The above table reveals that 30,786 cases were pending for disposal in the selected divisions as on 31 March 2013.

Audit findings

2.4.3 Discrepancies in processing and grant of refunds

A registered dealer claiming refund is required to file an application in Form 501 under Rules 17A(2) and 60(1) of the MVAT Rules. The Commissioner, on receipt of the application and after calling for bank guarantees may grant refund under Section 51 of the MVAT Act within eighteen months³ (as amended from 1 May 2011) subject to the following conditions:

In respect of the periods ending on or before 31 March 2010	On or before 30 September 2011
In respect of the periods beginning with 1 April 2010 and ending on 31 March 2011	On or before 30 June 2012

The cases of provisional refunds are required to be finalised under Section 23 of the MVAT Act and if any refund is found due to the dealers, it is granted along with interest at the rate of 0.5 per cent per month under Section 52 of the MVAT Act. However, no interest is admissible where the refund has been granted under Section 51 of the Act.

2.4.3.1 During test check of records in Mumbai, Pune and Thane Divisions, we noticed in 100 cases that the refund applications pertaining to different periods from 2005-06 to 2009-10 had been received by the Department on or before 31 March 2011. Although in all these cases refund was required to be made before 30 September 2011 and 30 June 2012, the claims were allowed (2012-13) belatedly with delays ranging from one month to six months under Section 23 of the MVAT Act. This resulted in grant of interest of ₹ 8.18 crore in refunds amounting to ₹ 68.25 crore under Section 52 of the MVAT Act. Had, the claims been passed timely under Section 51 of the MVAT Act, the payment of interest amounting to ₹ 8.18 crore could have been avoided.

Thus, it would be seen from the above that despite a lapse of eight years from the implementation of VAT in Maharashtra, the Department has not developed a system for timely processing of the refund cases.

2.4.3.2 We noticed during test check of records in Thane and Mumbai Divisions that four dealers were granted refund aggregating ₹ 6.21 crore under Section 51 of the MVAT Act. After the assessment of the cases, the dealers in Thane were entitled for additional refund of ₹ 2.27 crore, whereas the Mumbai dealers were not found entitled to any refund. However, the assessing authorities allowed interest on the entire amount of refund in contravention of the provisions of Section 52 of the Act. This resulted in irregular grant of interest on refunds aggregating ₹ 51 lakh as shown in **Table 2.4.3.2**.

¹ $(₹ 2,946.40 \div ₹ 3,477.46) \times 100 = 84.73 \%$.

² $(9,048 \div 15,588) \times 100 = 58.04 \%$.

³ Prior to 1 May 2011, the refund was required to be granted within a period of six months from the date of receipt of the application.

Table 2.4.3.2

(₹ in crore)							
Division/ No. of dealers	Period	Refund prior to assessment u/s 51	Refund after assessment	Total refund	Interest granted on total refund	Interest due on refund after assessment	Irregular interest Col 6 – Col 7
1	2	3	4	5	6	7	8
Thane/1	2010-11	3.05	1.78	4.83	0.46	0.19	0.27
Thane/1	2010-11	2.62	0.49	3.11	0.24	0.05	0.19
Mumbai/1	2005-06	0.19	0.00	0.19	0.02	0.00	0.02
	2006-07	0.23	0.00	0.23	0.02	0.00	0.02
Mumbai/1	2005-06	0.12	0.00	0.12	0.01	0.00	0.01
Total		6.21	2.27	8.48	0.75	0.24	0.51

The Department accepted (November 2013) the observation and stated that corrective action for the recovery of the interest has been initiated. Further progress in the matter has not been received (December 2014).

2.4.3.3 During test check (August 2013) of records in Thane Division, we noticed that a dealer holding Entitlement Certificate under Package Scheme of Incentives (PSI), 1993, was exempted from payment of tax up to the ceiling limit of ₹ 2.45 crore for the period from 11 October 2002 to 10 October 2014. The ceiling limit of ₹ 2.45 crore was exhausted in full during 2005-06. Thereafter, the dealer collected tax aggregating ₹ 1.16 crore during the subsequent periods 2006-07 to 2008-09 and deposited the same into the Government treasury. However, while finalising these assessments in October and December 2012 respectively, the assessing authority incorrectly refunded entire amount of tax of ₹ 1.16 crore resulting in irregular grant of refund of ₹ 1.16 crore.

The Department accepted (November 2013) the observation and stated that corrective action for recovery had been initiated. Further progress in the matter has not been received (December 2014).

2.4.3.4 As per Section 42(3) of the MVAT Act, a dealer who pays lump sum tax by way of composition shall pay five *per cent* of the total contract value in the case of construction contracts and eight *per cent* of such value in any other case with effect from 20 June 2006. Prior to 20 June 2006, a works contractor in case of all type of contractors (construction and other than construction) was liable to pay lump sum tax by way of composition equal to eight *per cent* of the total contract value.

As per Section 29(10) (b) of the MVAT Act, any sum collected by a person or dealer in contravention of Section 60 shall be forfeited to the State Government. As per Section 60(2) of the MVAT Act ‘no registered dealer shall collect any amount by way of tax or in lieu of tax in excess of the amount of tax payable by him on any sale of goods under the provisions of this Act’.

We noticed that for the period 2006-07 a civil works contractor who had opted for the payment of tax under the composition scheme collected tax of ₹ 13.55 lakh at pre-revised rate of eight *per cent* on sales turnover of ₹ 1.68 crore

instead of ₹ 8.40 lakh at the rate of five *per cent*. The contractor paid ₹ 8.40 lakh into the treasury. However, the assessing officer, while assessing the case, refunded the amount of the tax collected in excess instead of forfeiting the same. This resulted in incorrect grant of refund of ₹ 5.15 lakh.

2.4.3.5 Section 45 of the MVAT Act provides that if the principal contractor shows to the satisfaction of the Commissioner of Sales Tax that the tax has been paid by the sub-contractor then the principal contractor shall not be liable to pay tax on that transaction. Rule 50 of the MVAT Rules provides for a certificate in form 407 regarding turnover of sales and VAT paid by the sub-contractor.

We noticed during test check (February 2014) of records in Pune Division, that a principal contractor engaged in civil construction works was allowed deduction in respect of sub-contract value of ₹ 16.60 crore against Form 407 issued by the sub-contractor for the period 2009-10. The cross verification with the records of the sub-contractor revealed that the sub-contractor had executed the works valued at ₹ 16.60 crore, which included VAT of ₹ 79.07 lakh. As such, the principal contractor was entitled to a deduction of ₹ 15.81 crore only. This incorrect deduction of ₹ 79.07 lakh resulted in short levy of tax of ₹ 3.95 lakh.

2.4.4 Allowance of excess set-off

2.4.4.1 As per Rule 53(4) of the MVAT Rules in respect of construction contractor who had opted for the composition scheme, the set-off shall be allowed after reduction of four *per cent* of purchase price in respect of other than capital goods with effect from 20 June 2006.

We noticed during test check (February 2014) of records in Pune Division, that VAT was paid under composition scheme on sales turnover of ₹ 11.04 crore during the period 2008-09 by a sub-contractor. The corresponding purchase price worked out by the contractor was ₹ 6.65 crore. However, the same was incorrectly determined by the assessing authority as ₹ 3.11 crore only. This short determination of corresponding purchase price, resulted in reduction of the set-off by ₹ 12.44 lakh⁴ instead of ₹ 26.61 lakh⁵. Thus, incorrect setoff resulted in excess refund of ₹ 14.16 lakh⁶. The dealer was also liable to pay interest of ₹ 1.70 lakh under the MVAT Act.

2.4.4.2 As per Rule 53(3) of the MVAT Rules, if any dealer despatches any taxable goods outside the State, to any place within India not by reason of sale, to his own place of business or of his agent (branch transfer), then set-off to the extent of an amount equal to four *per cent* during 2006-07 and three *per cent* during 2007-08 of the purchase price of the corresponding taxable goods shall be deducted from the amount of setoff due to the dealer.

We noticed (July 2013 and March 2014) during test check of assessment records in Aurangabad and Mumbai Divisions that set-off was allowed in full to two dealers who had transferred goods to branches outside the State during 2006-07 and 2007-08, without reducing the same in accordance with the

⁴ Four *per cent* of ₹ 3.11 crore.

⁵ Four *per cent* of ₹ 6.65 crore

⁶ ₹ 26.61 lakh - ₹ 12.44 lakh

provisions of Rule 53(3). This resulted in grant of excess refund of ₹ 8.64 lakh as detailed in **Table 2.4.4.2**.

Table 2.4.4.2

Division	Period	Branch Transfer (₹ in crore)	Purchase value of goods transferred to Branch (₹ in crore)	Rate of reduction notified under CST Act (per cent)	Amount of reduction-excess set-off (₹ in lakh)
Aurangabad	2006-07	1.65	1.55	4	6.20
	2007-08	0.76	0.69	3	2.08
Mumbai	2006-07	0.12	0.09	4	0.36
Total					8.64

2.4.5 Inadmissible deduction under works contract

As per Section 42(3) of the MVAT Act, no deduction on any account, except amounts payable towards sub-contract involving goods to a registered sub-contractor, shall be allowed to a contractor who opts for composition scheme.

During test check (September 2013 to March 2014) of assessment records in Mumbai, Nashik and Pune Divisions, for the period 2006-07 to 2008-09, we noticed that inadmissible deductions aggregating ₹ 94.91 lakh on account of tax element included in sale price and service tax etc., though inadmissible, were allowed in respect of six dealers who had opted for composition scheme for payment of tax. This resulted in excess grant of refund of ₹ 6.49 lakh.

2.4.6 Excess deferment of tax

As per Section 92(1) of the MVAT Act, no eligible unit to whom the Eligibility Certificate (EC) has been granted shall be eligible to draw the benefit in any year after the appointed date of deferment, in respect of production in excess of the annual production capacity of the unit as prescribed by the State Government in the eligibility certificate issued to the beneficiary.

During test check (December 2013) of RRA records in Nashik Division, we noticed in a case finalised in March 2013, that a dealer was holding EC issued by the State Industrial and Investment Corporation of Maharashtra Limited (SICOM Ltd.) for manufacturing of alcohol, rectified spirit, etc. for the period from 11 January 2002 to 10 January 2007 with ceiling limit of 46.27 crore litre. The dealer was entitled to deferment of tax up to a ceiling of 150 lakh litre for the period 2005-06. However, while finalising the assessment, the assessing authority allowed the benefit of deferment for 193.93 lakh litres. The excess deferment of tax on 43.93 lakh litres resulted in excess grant of refund of ₹ 2.12 crore.

Further, we noticed that as the assessments for periods commencing from 2006-07 onwards were pending, this aspect of ceiling limit may be kept in view at the time of their completion of these assessments.

2.4.7 Application of incorrect rate of tax

2.4.7.1 As per the provisions of the MVAT Act, all goods which are not covered by Schedule A, B, C and D to the MVAT Act shall be covered by entry 1 of Schedule E of the Act and shall be taxable at the rate of 12.5 *per cent*. The commodity 'micronutrients fertilizer' was introduced in Schedule Entry C-34 with effect from 1 May 2005 and was taxable at the rate of four *per cent*. Prior to this, it was not covered in any of the schedules and was taxable at the rate of 12.5 *per cent*.

During test check of records in Pune division, we noticed in case of a manufacturer of micronutrients fertilizer that sales of micronutrients fertilizer amounting to ₹ 84.58 crore relating to the month of April 2005 was taxed at the rate of four *per cent*. As the commodity was not covered elsewhere in the schedule during April 2005, the tax was required to be levied at the rate of 12.5 *per cent*. The levy of tax at lesser rate resulted in short levy of tax at ₹ 7.19 lakh.

2.4.7.2 Rule 58 of the MVAT Act stipulates that in case of works contract, the tax is payable on the value of goods involved in execution of works contract at the rates applicable to such goods under the Act.

The Commissioner of Sales Tax in respect of works contract relating to supply and laying of cement concrete paver blocks (CC Paver blocks), clarified that the rate of tax is to be levied on the material used in the property that has been transferred. The rates shall be same as specified in the schedule.

Sale of cement is taxable at the rate of 12.5 *per cent* under Schedule E as the same is not covered in any of the other Schedules. CC paver blocks are taxable at the rate of four *per cent*.

During test check of records in Mumbai division, we noticed that a dealer engaged in manufacturing, supplying and laying of CC paver blocks, had utilised cement valued at ₹ 82.29 lakh in the manufacture of CC paver blocks during 2007-08 and 2008-09. The corresponding sale of cement utilised in the paver blocks after adding the profit percentage amounted to ₹ 1.40 crore. The contractor was liable to pay tax ₹ 17.50 lakh. However, the dealer paid tax of ₹ 5.60 lakh at the rate of four per cent treating the paver blocks as a separate commodity. The excess grant of refund in this case worked out to ₹ 11.94 lakh.

The above cases were pointed out to the Department and reported to the Government in July 2014. The Department stated that the cases pointed out would be rechecked and action will be taken on verification of the facts. However, report on the action taken has not been received (December 2014).

2.4.8 Recovery of dues

2.4.8.1 Absence of time limit for issue of demand notice

As per Section 32 of the MVAT Act, the amount of tax due as per any order passed under the provision of the Act is to be paid with interest and penalty (if any) within 30 days from the date of service of the notice issued. However, no time limit has been prescribed in the MVAT Act for issue of the demand

notices to the dealers by the assessing authorities after completion of an assessment.

During test check (September 2013 to January 2014) of RRA records in Aurangabad and Mumbai Divisions, we noticed that, 46 assessments of 40 dealers were assessed between June 2012 and March 2013. A demand of ₹ 17.74 crore was required to be raised. However, the demands were raised after a lapse of four months to nine months after passing the assessment order. The delay in raising the demand resulted in blockage of Government revenue.

A prescribed time limit for issue of demand notice would have prompted the authorities to issue the demand notices timely and the amounts in question could have been recovered without any loss of time. In view of this, the Government may consider fixing a time limit for issue of demand notices in the interest of revenue.

2.4.8.2 Non-recovery of dues

MVAT Act provides that if the demands raised under Section 32 are not paid within 30 days from the date of issue of demand notice, the dues shall be recovered as arrears of land revenue.

It was noticed (September 2013 to January 2014) in Mumbai Division that in 46 periods in respect of 45 dealers, *ex-parte* assessment orders under Section 23(2) were passed for different periods (2005-06 to 2008-09) and the notices for demand aggregating ₹ 33.28 crore were issued to them between August 2012 and July 2013. The dealers, however, did not deposit the tax dues and no action was taken to recover the same as arrears of land revenue.

The Department stated (September 2013 to January 2014) that corrective action would be taken after verification. Further reply has not been received (December 2014).

2.4.9 Non-levy of penalty

As per Section 29(4) of the MVAT Act, if a dealer is held producing knowingly false bills, cash memorandums, vouchers etc., the Commissioner may impose on him, in addition to any tax payable by him, a penalty equal to the amount of tax found due as a result of the commission or omission.

We noticed in Mumbai, Nashik, Pune and Thane Divisions, that in 115 cases, the set-off claimed by dealers on purchases involving tax effect of ₹ 1.28 crore shown in their returns for periods from 2005-06 to 2009-10 was disallowed by the assessing authorities as these purchases were found *hawala* transactions made by the selling dealers.⁷ These selling dealers were declared *hawala* dealers and input tax credit (ITC)⁸ aggregating ₹ 1.28 crore claimed by the purchasing dealers in respect of such purchases was disallowed by the Department. However, penalty under Section 29(4) equal to the amount of set-off claimed on *hawala* purchases was not levied. This resulted in non-levy of penalty aggregating ₹ 1.28 crore.

⁷ Dealers issuing false bills for a commission to other tax paying dealers, to enable the latter to fraudulently claim input tax credits. There is no movement of goods against these bills.

⁸ The input tax credit in relation to any period means setting off the amount of input tax i.e. tax paid on purchases by a registered dealer against the amount of his output tax i.e., tax payable on the sales made by him.

The Department stated that the matter would be verified. Further progress in the matter has not been received (December 2014).

2.4.10 Discrepancies noticed in the cases finalised under CST Act

2.4.10.1 Incorrect exemption due to production of incorrect and incomplete forms

As per Section 5 (3) and (4) of the Central Sales Tax Act, 1956 (CST Act) and Rules made there under, the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India is deemed to be in course of export and is exempt from tax, provided, the last sale or purchase took place after, and was for the purpose of complying with the agreement or order for or in relation to such export. Also, the selling dealer is required to produce a certificate in Form H duly filled in and signed by the exporter along with the evidence of export of goods.

During test check of records in Mumbai, Pune and Thane Divisions, we noticed that, three dealers engaged in manufacture of machinery for pharmaceutical and plastic industries were allowed sales aggregating ₹ 88.70 lakh as exempt from tax on Form H during 2008-09 and 2010-11. However, our scrutiny revealed that purchase orders placed by the exporters in these cases were prior to the import orders received from the foreign buyer. This indicated that the purchases made by the exporters were not preceded by an agreement with foreign buyer. As such exemption of ₹ 11.09 lakh availed of by the dealer was in contravention of provisions of Section 5(3) and 5(4) of the CST Act. This resulted in excess grant of refund.

2.4.10.2 Incomplete I form(s)

Sales valued at ₹ 33.67 crore involving tax effect of ₹ 2.53 crore in 15 cases made in Special Economic Zones (SEZ) were exempted from payment of tax by the assessing authorities in Aurangabad, Mumbai, Pune and Thane, though Form I necessary for allowing such exemptions under Section 8 of the CST Act, were incomplete. These did not contain the important details like name, number and quantity of the goods and the name of the selling dealers from which the goods were purchased. As such, the correctness of sales allowed on incomplete Form I could not be verified. The possible loss of revenue of ₹ 2.53 crore in these cases cannot be ruled out.

The Department stated that the matter would be verified. Further progress in the matter has not been received (December 2014).

2.4.10.3 Absence of documentary evidence

Audit scrutiny in Mumbai Division revealed that export documents such as Bank Realisation Certificates, copies of agreement with foreign buyer, shipping bills, etc., required under Section 5(1) of the CST Act, were not available on record. As such, the correctness of the exemption of tax of ₹ 5.65 crore in support of export sales valued at ₹ 197.65 crore made by five dealers during 2005-06 to 2008-09 could not be ascertained.

2.4.10.4 Incomplete H form(s)

Form H in support of export sales valued at ₹ 6.25 crore relating to different periods from 2005-06 to 2010-2011 (11 periods⁹) pertaining to 11 dealers of Aurangabad, Mumbai, Nashik, Pune and Thane Divisions, were found incomplete. It did not contain necessary details like agreement orders from foreign buyer, purchase orders from the local buyer etc. As such, the basis of this exemption of tax (₹ 42.52 lakh) could not be verified in audit.

The above cases were pointed out to the Department and reported to the Government in July 2014. The Department stated that the cases pointed out would be rechecked and action will be taken on verification of the facts. However, report on the action taken has not been received (December 2014).

2.4.11 Non-registration of the dealers despite availability of the data in the Department

As per Section 3 of the MVAT Act, every dealer having an annual turnover of ₹ 5 lakh and above is liable to pay tax. He is also required to obtain a valid certificate of registration as provided in the MVAT Act.

As per Section 66 (2) of the MVAT Act, for the purpose of the survey, the Commissioner may, by general or special notice, require any dealer or class of dealers to furnish the names, addresses and such other particulars as he may find necessary, relating to the persons and dealers who have purchased any goods from or sold any goods to such dealer or class of dealers during any given period.

During test check of records of the RRA Branches in Mumbai, Nashik, Pune and Thane Divisions, we noticed that, in 208 cases, the dealers had shown purchases aggregating ₹ 119.43 crore from unregistered dealers in their returns/purchase statement/Form 704 relating to different periods from 2005-06 to 2010-11. Though the purchases made from each dealer exceeded ₹ five lakh, no efforts were made by the survey branch to get the names and address and other particulars of these unregistered dealers. The concerned RRA Branch had also not taken the matter with the survey branch for further investigation for their registration. As a result, the possibility of evasion of tax by these unregistered dealers could not be ruled out.

After this was pointed out, the Department stated that corrective action would be taken after the verification of the facts. However, the fact remains that the Department has not put in place a system for exchange of information regarding the turnover of dealers between the RRA branch and survey branch so that these unregistered dealers could be brought under the tax net.

The draft paragraph was forwarded to the Department/Government in July 2014. Their reply has not been received (December 2014).

⁹ Period(s) : A local term means assessment.

2.4.12 Conclusion and Recommendations

Thus the above facts reveal that delays in finalisation of the refund cases resulted in an avoidable expenditure of ₹ 8.18 crore paid on account of interest by the Department in 100 cases, the assessments were not finalised correctly and with adequate care that could have prevented payment of incorrect, irregular and excess refunds amounting to ₹ 4.38 crore, the documents required to be furnished in interstate and export transaction having a tax effect of ₹ 8.72 crore needed for claiming exemption from payment tax were either not found on record or were found incomplete. Relevant provisions in recovery of the demands were not followed with the result ₹ 33.28 crore remained unrecovered. In addition demands aggregating to ₹ 17.74 crore were raised after a lapse of four to nine months resulting in delay in collection of the amount to that extent.

In view of the above, it is recommended that the Sales Tax Department:

- may issue instructions to the Refund and Refund Audit Branch for timely finalisation of the refund cases, thereby to avoid payment of interest on delayed refunds;
- may put in place suitable mechanism to raise demands within a reasonable timeframe and ensure expeditious recovery of demands raised; and
- ensure that the assessment of refund cases is made correctly and all necessary documents are obtained and put on record.

2.5 Other audit observations

Our scrutiny of the assessment records finalised under Bombay Sales Tax Act, 1959 (BST Act), Maharashtra Value Added Tax, 2002 (MVAT Act), Central Sales Tax Act, 1956 (CST Act) in the Sales Tax Department revealed cases of non-observance of provisions of Acts/Rules, non/short levy of tax, irregular grant of exemptions and other cases as mentioned in the succeeding paragraphs in this Chapter. These cases are illustrative and are based on a test check carried out by us. Such omissions on the part of Assessing Authorities (AAs) are pointed out in audit each year, but not only do the irregularities persist; these remain undetected till we conduct audit. There is need for the Government to improve the internal control system including strengthening of internal audit.

Discrepancies noticed in cases finalised under Maharashtra Value Added Tax Act, 2002 (MVAT Act)

2.5.1 Incorrect allowance of set-off on purchases from *hawala* dealers

Deputy Commissioner of Sales Tax, LTU-E-626, Mazgaon Division, Mumbai

Trade Circular No. 8T of June 2012, issued by the Commissioner of Sales Tax stipulated that ITC claim shall not be allowed on purchases made by any dealer from *hawala* dealers even though such *hawala* dealer has paid the taxes partially or fully, as these are not genuine transactions. Investigation Branch of Sales Tax Department has prepared a list of *hawala* dealers.

Cross verification (August 2013) of the assessment records with the list of *hawala* dealers prepared by the Department revealed that a dealer dealing in import and resale of ferrous and non-ferrous metal for the period 2008-09 had claimed setoff of ₹ 14.73 lakh on purchases made from three dealers. These three dealers were declared as *hawala* by the Department and as such, the setoff claimed by the dealer was required to be disallowed in terms of the Circular of June 2012. Thus, incorrect allowance of set-off resulted in underassessment of tax including interest and penalty of ₹ 38.12 lakh.

After this was pointed out (September, 2013), the Department accepted the observation and communicated (October 2013) the same to Joint Commissioner of Sales Tax (Appeal) I for corrective action as the dealer had preferred an appeal against the assessment order. Further progress in the matter has not been received.

We reported the matter to the Government in May 2014. Their reply has not been received (December 2014).

2.5.2 Non-levy of penalty on *hawala* transactions

Deputy Commissioner of Sales Tax, E-818 Business Audit, Mazgaon, Mumbai

As per Section 29(4) of the MVAT Act, where any person or dealer has knowingly issued or produced any document including a false bill, cash memorandum, voucher, declaration or certificate/by reason of which any

transaction of sale or purchase effected by him or any other person or dealer is not liable to be taxed or is liable to be taxed at a reduced rate or incorrect set-off is liable to be claimed on such transaction, the commissioner may, impose on him in addition to any tax payable by him, a penalty equal to the amount of tax found due as a result of any of the aforesaid acts of commission or omission.

During scrutiny (April 2013) of records relating to business audit of a reseller of pipes and pipe fittings for the years 2005-06, 2006-07, 2008-09 and 2009-10, we noticed that the assessing officer had disallowed set-off amounting to ₹ 10.21 lakh on account of purchases made from *hawala* dealers. However, penalty equal to the amount of set-off disallowed i.e. ₹ 10.21 lakh was not levied by the assessing authority.

After we pointed out the case in May 2013, the Department stated that as per Trade Circular 22T of 2009, if a dealer files revised return along with interest at the rate of 25 per cent under Section 30(4), which was done in this case, then penalty under Section 29(3) is not leviable.

The reply of the Department is not in line with the provisions of the Act as in this case penalty is leviable under Section 29(4) and not 29(3) of the Act. The Trade Circular of 2009 applies to Section 29(3) which has further been explained in the notes under Section 29 of the Act. This stipulates that if a person produces false documents including a false bill, penalty under section 29(4) is leviable. Besides, there was nothing on record to indicate that the assessing authority had discussed the provisions regarding the levy of penalty in the assessment order.

We reported the matter to the Government in May 2014. Their reply has not been received (December 2014).

2.5.3 Non-levy of VAT on Service Tax

Deputy Commissioner of Sales Tax, E-002, LTU, Nasik and Deputy Commissioner of Sales Tax, E-833, Business Audit, Mazgaon, Mumbai

As per Section 2(25) of the MVAT Act, “sale price” means the amount of value consideration paid or payable to a dealer for any sale made including any sum charged for anything done by the seller in respect of the goods at the time of or before delivery thereof, other than the cost of insurance for transit or of installation, when such cost is separately charged. The Commissioner of Sales Tax held (DDQ of January 2012) that service tax payable or paid on a transaction forms the part of sale price liable to tax under MVAT Act 2002.

During test check (September 2012 and October 2012) of the assessments and other related records finalised between July 2011 to March 2012 of two dealers for three periods between 2007-08 and 2008-09, we noticed that service tax aggregating ₹ 1.09 crore collected by the dealers was not included in the taxable turnover of sales. This resulted in under assessment of ₹ 12.88 lakh including interest.

After we pointed out the cases in October 2012 and November 2012, the Department stated (January 2013) in case of one dealer that since the dealer had preferred appeal against the payment of tax, the audit observation had

been communicated to the appellate authority. Reply in the other case has not been received.

We reported the matter to the Government in July, 2014. Their reply has not been received (December 2014).

2.5.4 Non-levy of penalty on misclassification/concealment of transactions

Deputy Commissioner of Sales Tax, Business Audit – IV Branch, E-822, Mazgon, Mumbai

As per Section 29(3) of the MVAT Act, if a dealer has knowingly misclassified or has concealed the particulars of any transaction liable to tax, the Commissioner may impose upon him, in addition to any tax due from him, a penalty equal to the amount of tax found due as a result of any of the aforesaid acts of commission or omission. VAT on power inverters is leviable at the rate of 12.5 *per cent* as per schedule entry E-1.

2.5.4.1 During test check of the assessment records (September 2011) of a wholesaler and distributor of power inverters for the period 2005-06 (finalised in March 2011), we noticed that the dealer had collected and paid tax at the rate of four *per cent* instead of 12.5 *per cent* on sale of power inverters valued at ₹ 1.93 crore treating it as an IT product under Schedule entry C-56. The AA had, however, levied tax at the rate of 12.5 *per cent* and raised differential additional tax of ₹ 16.40 lakh but omitted to levy penalty of ₹ 16.40 lakh on additional dues raised by it, resulting in short realisation of revenue to that extent.

After we pointed out the case in October 2011, the Department accepted the audit observation and levied a penalty of ₹ 16.40 lakh for the year 2005-06 in August 2013. A report on the recovery has not been received.

We reported the matter to the Government in March 2014. Their reply has not been received (November 2014).

2.5.4.2 During test check of the assessment records (September 2011) of a wholesaler and distributor of power inverters for the period 2007-08 (finalised in March 2011), we noticed that the assessing officer had levied tax at the rate of 12.5 *per cent* on the sale of power inverters (Schedule entry E-1) of ₹ 7.99 crore on which the dealer had collected and paid tax at four *per cent* treating the commodity as UPS¹⁰, an IT product (Scheduled entry C-56) and raised additional tax of ₹ 67.89 lakh. Further, the AA had also levied tax at the rate of 12.5 *per cent* on the turnover of ₹ 22 lakh which was not shown in the returns filed by the dealer for 2007-08 but was determined at the time of business audit conducted under Section 22 of the MVAT Act. The AA had levied additional tax of ₹ 70.64 lakh (₹ 67.89 lakh + ₹ 2.75 lakh) for the year 2007-08. However, the AA had not levied penalty of ₹ 70.64 lakh equal to the additional dues. There was nothing on record to indicate that the assessing authority had discussed the provisions regarding the non-levy of penalty in the assessment order.

¹⁰ Uninterrupted Power Supply.

After we pointed out the case in October 2011, the Department accepted the audit observation and levied a penalty of ₹ 70.64 lakh for the year 2007-08 in August 2013. A report on the recovery has not been received.

We reported the matter to the Government in March 2014; their reply has not been received (December 2014).

Discrepancies noticed in cases finalised under the Bombay Sales Tax Act, 1959 (BST Act)

2.5.5 Short levy of interest

2.5.5.1 Sr. Deputy Commissioner of Sales Tax, M – 13, Nariman Point Division, Mumbai

As per Section 36(3)(b)(b) of the BST Act, if a dealer who has filed all the returns other than the annual return in respect of the said period of the assessment within one month from the end of the said period and the tax remaining unpaid is more than 10 *per cent* of total tax payable on the date prescribed for filing of the last return in respect of a period of assessment, then the dealer is liable to pay simple interest at the rate of 1.25 *per cent* of such tax for each month subject to a maximum period of 18 months.

During test check (February 2011) of the assessment records of a dealer dealing in import and export of diamonds, we noticed that the dealer was assessed to a tax of ₹ 1.90 crore for the period 2004-05 (finalised in March 2010), out of which he had paid ₹ 1.20 crore along with the returns. The balance of ₹ 70.27 lakh (which was more than 10 *per cent* of the total tax payable) remained unpaid at the time of assessment and interest of ₹ 15.81 lakh was leviable thereon for a period of 18 months. However, the assessing officer levied interest of ₹ 8.99 lakh resulting in short levy of interest of ₹ 6.82 lakh.

After we pointed out the case in April 2011, the Department accepted the observation and raised additional demand of ₹ 6.82 lakh (March 2013). A report on the recovery has not been received.

We reported the matter to the Government in March 2014; their reply has not been received (December 2014).

2.5.5.2 Sales Tax Officer, A-03, Nariman Point Division, Mumbai

As per Section 36(3) (b) of the BST Act, if a dealer has not filed the returns in time and any tax remained unpaid on the date prescribed for filing of the last return in respect of a period of assessment, then the dealer is liable to pay simple interest at the rate of 1.25 *per cent* of such tax for each month or part thereof from the date immediately following the date on which the period for which the dealer has been assessed expires till the date of order of assessment.

During the scrutiny (May 2008) of assessment records of a reseller, importer, exporter and general merchant in petroleum products, oil, oil seeds etc. for the period 2002-03 (finalised in November 2007) and who was assessed for dues of ₹ 42.53 lakh, we noticed that the AA had levied interest of ₹ 28.71 lakh instead of ₹ 34.02 lakh due to arithmetical mistakes in assessment order. This resulted in short levy of interest by ₹ 5.31 lakh.

After we pointed out the case in June 2008, the Department accepted the audit observation and passed an order in August 2013 raising additional demand of ₹ 5.85 lakh on account of interest u/s 36(3)(b). A report on the recovery has not been received.

We reported the matter to the Government in May 2014. Their reply has not been received (December 2014).

2.5.6 Delay in action in recovery of arrears of revenue

2.5.6.1 Sales Tax officer, D 1530, Jalgaon Division

As per the BST Act, the tax assessed was required to be paid by the assessee in a manner and within the time specified in the notice of demand. In case of failure on the part of the assessee to pay the amount within the date mentioned in the demand notice, Section 38(B) of the BST Act empowers the Commissioner of Sales Tax to exercise all the powers and perform all the duties under the Maharashtra Land Revenue Code, 1966 (MLR Code), to recover the amount(s) which remains unpaid as arrears of land revenue. If the defaulters own property outside the State, the concerned assessing authority is required to issue, under the provisions of the Revenue Recovery Act 1890, a "Revenue Recovery Certificate (RRC)" to the Collectors of the Districts of the States in which the defaulters possess properties, to recover the arrears of tax.

During test check of the recovery files in Jalgaon Division in November 2012, we noticed that a company, manufacturing chemicals and allied products was in arrears of assessed sales tax dues of ₹ 33.29 lakh for the periods 1990-91 and 1991-92. The assessment orders for the said periods were passed *ex-parte* in March 1994 and March 1999 as the dealer did not produce his records for assessment to Assessing Authority (AA) who in turn assessed the case on the basis of information available on the records. However, from the recovery files it was noticed that the Department had started recovery proceedings only in November 2012 i.e. after 18 and 13 years from the date of passing the respective assessment orders. It has come to notice that the dealer has closed down and left the place of business almost 12 years ago. The Department issued a letter to Maharashtra Industrial Development Corporation (MIDC), Jalgaon for recovery of dues and also to the Police Inspector to trace out the dealer (November 2012). But, no response was received in this regard by the Department.

The above facts indicate that belated action in assessing the dealer and ineffective follow up action resulted in non-recovery of arrears of ₹ 33.29 lakh. However, there was nothing on record to indicate that any action has been taken against the persons responsible for lapse.

We reported the matter to the Government in March 2014. Their reply has not been received (December 2014).

2.5.6.2 Assistant Commissioner of Sales Tax, C- 817, Jalgaon Division, Dhule

During test check of the recovery files in Jalgaon Division in November 2012, we noticed that a company manufacturing chemicals and holding Entitlement Certificate under exemption mode for the period from 1 February 1997 to 31 December 2003 with monetary ceiling of ₹ 15.74 lakh was assessed in March

2009 for periods from 1997-98 to 2001-02 under the BST Act and raised demand for dues amounting to ₹ 30.53 lakh. Scrutiny of the records revealed that the dealer had already closed his business from 2002-03 and the Department was also aware of the fact since June 2003. However no action in this case was taken from June 2003 to April 2009, i.e. during a period of almost six years, The Department in April 2009 requested Maharashtra State Electricity Distribution Company Limited (MSEDCL) and the MIDC Police Station for help to trace out the dealer. However, no response in the matter was found to have been received from these quarters. Further, the Department in December 2010 informed MIDC to prohibit sale, donation or transfer of the property of the dealer. The FIR was lodged by the Department only in June 2013 to trace the dealer.

Thus, belated action in assessing the dealer and lack of timely action by the Department to trace the dealer resulted in non-recovery of Government revenue of ₹ 30.53 lakh. There was nothing on record to indicate that any action has been taken against the persons responsible for lapse.

We reported the matter to the Government in May 2014. Their reply has not been received (December 2014).